

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PERCY R. TAYLOR,

Plaintiff,

-vs-

COOK COUNTY SHERIFF'S OFFICE,
et al.,

Defendants.

No. 13 C 1856

Chicago, Illinois
October 24, 2017
9:00 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ANDREA R. WOOD

APPEARANCES:

For the Plaintiff:

LAW OFFICES OF RICHARD LINDEN
17 North Wabash, Suite 400
Chicago, Illinois 60602
BY: MR. RICHARD F. LINDEN

LAW OFFICES OF PETER V. BUSTAMANTE
17 North State Street, Suite 1550
Chicago, Illinois 60602
BY: MR. PETER VINCENT BUSTAMANTE

For Defendant Dart,
Cook County Sheriff's
Office, Defendants
Ways, Whittler
and Smith:

HINSHAW & CULBERTSON LLP
222 North LaSalle Street, Suite 300
Chicago, Illinois 60601
BY: MS. VIRGINIA BRETTE BENSINGER

COLETTE M. KUEMMETH, CSR, RMR, FCRR
OFFICIAL COURT REPORTER
219 South Dearborn Street
Room 1928
Chicago, Illinois 60604
(312) 554-8931

1 APPEARANCES: (Continued)

2 For Defendants Ernst,
3 Fitzgerald, and Estate
4 of Patrick Murphy:

ROCK, FUSCO & CONNELLY, LLC
321 North Clark Street, Suite 2200
Chicago, Illinois 60654
5 BY: MS. CATHERINE MACNEIL BARBER
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 (Proceedings heard in open court:)

2 THE CLERK: Calling case 13 CV 1856, Taylor versus
3 Cook County.

4 MR. BUSTAMANTE: Good morning, your Honor. Peter
5 Bustamante on behalf of the plaintiff.

6 MR. LINDEN: Good morning, your Honor. Rick
7 Linden, also on behalf of plaintiff.

8 MS. BARBER: Catherine Barber for Defendants Ernst,
9 Fitzgerald, and Estate of Patrick Murphy. Good morning.

10 MS. BENSINGER: Good morning, your Honor. Brette
11 Bensinger on behalf of Sheriff Dart, Cook County Sheriff's
12 Office, Defendant Ways, Whittler, and Smith.

13 MR. BUSTAMANTE: Your Honor, mea culpa, we had a
14 lot of difficulty because of a move that's not yet
15 accomplished. It will be finalized this Thursday.
16 Difficulties with internet, telephones, and therefore we did
17 not file the joint status report on time. Although we did
18 meet and had a conference and had an agreement.

19 I have been informed by counsel today that I filed
20 the wrong report. Or attached the wrong report for the
21 motion for leave. So I suggest that they have the right
22 report, if the Court grants us leave, they can file it. I
23 frankly thought I was filing the right report.

24 THE COURT: What is the difference between the two
25 reports?

1 MS. BENSINGER: Your Honor, there were a few edits,
2 just word changes, and then the attachment of the exhibit,
3 which is critical to the report. And the exhibit is
4 plaintiff's responses to the interrogatories that we issued.
5 And we have significant problems with plaintiff's responses
6 to the interrogatories. And that should have been included
7 as an exhibit.

8 We've got significant problems with these guys
9 taking this case seriously. I mean, we received a draft
10 report, joint draft report -- it was due on Friday, the 13th.
11 I sent emails, you know, requesting it, and didn't get a
12 draft until after 3:00 p.m. on Friday when we were supposed
13 to file it. And the draft was totally, you know,
14 inconsistent with your order, and we wouldn't sign on to it.
15 And then we received a revised report from plaintiffs that
16 following Monday, and we provided our edits later that day.

17 We didn't get another -- you know, they ignored our
18 followups and filed a completely different report yesterday.

19 So I just feel like they're not taking this case
20 seriously, they're not taking my co-counsel and I seriously,
21 and it's really been a significant struggle, your Honor.

22 THE COURT: Okay. So if you weren't getting a
23 draft report from plaintiff's counsel, why didn't you just
24 draft your own? It's a joint report, so I didn't indicate
25 that one party or the other should be primarily responsible

1 for preparing it.

2 MS. BENSINGER: We sent emails saying that we would
3 plan on filing the report ourselves. And didn't receive a
4 response. We figured it was probably -- we wanted to make
5 sure that we were on the up-and-up and had an agreement by
6 the opposing side to file anything. I mean, we certainly
7 could have filed something just indicating our side of the
8 issues, but...

9 MS. BARBER: I think what we're saying is that we
10 didn't think that that would be helpful to the Court since
11 that was not what the Court had asked for. And the way that
12 plaintiff had given us a draft, we felt compelled to have to
13 respond to each of their -- so we just couldn't get it to be
14 on a joint level.

15 THE COURT: So Mr. Bustamante, when you realized
16 that you were having logistical issues because of a move, why
17 didn't you ask defense counsel to take the lead on preparing
18 and filing the report?

19 MR. BUSTAMANTE: Your Honor, I don't want to
20 misstate something, because my partner, Paula Giroux, was, in
21 fact, in touch -- I hope, hopefully, with opposing counsel.
22 My understanding was that we got the word it's your
23 obligation to send us a draft report. And that's what we
24 did.

25 MS. BENSINGER: No. I mean --

1 MR. BUSTAMANTE: That's what I heard.

2 MS. BENSINGER: They've got three different law
3 firms, I think: The Linden law firm, Bustamante, and
4 Ms. Giroux. So I just don't understand how we didn't get a
5 draft report until Friday after 3:00 p.m. There was no
6 expectation from us that we would -- we sent an email: Are
7 you going to send the draft report? What's going on?

8 MS. BARBER: There was also a conversation, just to
9 be clear, I think this is what Mr. Bustamante -- could be
10 what Mr. Bustamante is talking about. There was a deposition
11 scheduled last Thursday, and we did have a conversation about
12 the status report since we hadn't gotten a draft. And I
13 asked for plaintiffs to give a draft that -- to see if they
14 could get it that day. And Ms. Giroux said that she would
15 try.

16 So then we followed up on Friday, but we didn't
17 receive it until later in the day.

18 THE COURT: Do the defendants have the correct
19 version of the report, what you believe to be the correct
20 version of the report?

21 MS. BARBER: Yes.

22 THE COURT: Do you have a copy that you can hand
23 up?

24 MS. BENSINGER: I do, your Honor.

25 THE COURT: Does plaintiff's counsel have a copy of

1 this report as well?

2 MS. BENSINGER: Yes. They received it last week.
3 I can give them a copy right here.

4 THE COURT: Is this what you think you filed?

5 MR. BUSTAMANTE: I have no objection.

6 MS. BENSINGER: He should have read it last week
7 when he received it.

8 THE COURT: I'm less concerned in the back and
9 forth between the parties and more concerned in making sure
10 that I have in front of me what is intended to be the actual
11 status report.

12 MS. BENSINGER: The exhibit is attached to it, your
13 Honor.

14 THE COURT: Because obviously if what was filed is
15 not what the defendants believe that they sent back, then
16 perhaps Mr. Bustamante didn't read it at the time for
17 whatever reason.

18 MR. LINDEN: Your Honor, like I said, we apologize
19 for any confusion, but we were going back and forth with
20 drafts. We tried, we intended to put the right draft in.
21 And we all read the draft. And plaintiff never offered -- or
22 defense never offered their draft either, so it wasn't real
23 clear. We agreed to take the lead, but they didn't help
24 things at all.

25 MR. BUSTAMANTE: Rick, it doesn't really matter.

1 It just doesn't matter.

2 THE COURT: Okay. It looks like maybe the witness
3 list is a little different.

4 MS. BENSINGER: Yes.

5 THE COURT: And section 2 is perhaps a little
6 different, though I can't tell what the difference is.

7 Okay. Let's talk about the actual issues and try
8 to get some of them resolved, and I'll figure out if there
9 are things that I'm just not up to speed on because I didn't
10 have the correct report or the exhibit. I think at least
11 some of these issues we can discuss and hopefully resolve I
12 would think pretty quickly. So let's talk about those.

13 The depositions that the plaintiff wants that the
14 defense is contesting, Sheriff Dart and Mr. Fitzgerald.
15 Let's start with Mr. Fitzgerald. Who noticed that
16 deposition?

17 MR. BUSTAMANTE: Initially it was noticed by
18 Attorney Coleman, and she took the deposition. And
19 thereafter the court reporter service lost it.
20 Electronically, mechanically, whatever way, it's gone.

21 Mr. Fitzgerald also gave deposition testimony in
22 the state court case that at that time was being brought by
23 the Taylor children. And --

24 MS. BARBER: That's incorrect.

25 THE COURT: Okay. Well, let me hear from

1 plaintiff's counsel on this first, and then I'll give you a
2 chance to respond.

3 Mr. Bustamante, you can go on. Continue.

4 MR. BUSTAMANTE: I'm sorry?

5 THE COURT: You can go on.

6 MR. BUSTAMANTE: Oh, okay. So the defense wants us
7 to accept that state testimony instead of us retaking
8 Fitzgerald's deposition. And frankly there are several
9 differences that we have between state and federal court.
10 No. 1 is the time that is allowed.

11 I'll have to tell the Court I have not yet read the
12 state court deposition. Mr. Linden has. There are a number
13 of areas we would like to develop that are not developed in
14 the state court case. And I think that we can compromise to
15 be limited to a number of hours, we shouldn't have the whole
16 full seven hours, but we should be permitted to take a
17 deposition through, where no fault of our own, the transcript
18 is lost.

19 THE COURT: Do you know what happened to it?

20 MR. LINDEN: I spoke to the court reporter, and
21 they sent counsel their statement, the court reporter. It's
22 the first time it ever happened to them. It's U.S. Legal
23 Support, and evidently their computer crashed and even their
24 backup crashed. We tried, we pled with them, and they said
25 it's irretrievable. So it's really no fault of the defense

1 or the plaintiff. It's never happened before with this
2 pretty large court reporting service.

3 THE COURT: Did they give you your money back?

4 MR. LINDEN: They didn't charge us. At first I got
5 an invoice, it's not right I'm paying for this invoice for
6 Ernst to get it. Ernst and Fitzgerald were deposed at the
7 same time. They were able to retrieve Ernst. And
8 Fitzgerald, through no fault of anybody before the court,
9 it's irretrievable. It's unfortunate, but that's what
10 happened.

11 MR. BUSTAMANTE: Actually they did not charge us
12 for Ernst, which was some \$800.

13 THE COURT: Fitzgerald is actually a defendant in
14 the case.

15 MS. BARBER: Correct.

16 THE COURT: Do the defendants dispute that this was
17 just a court reporter error?

18 MS. BARBER: I don't have any reason to disbelieve
19 the court reporter service, that they lost it. I'm not sure
20 why there wasn't a backup tape. I don't think I've ever used
21 a court reporter that didn't have a backup tape. And I'm not
22 sure how that affects their licensing that they lost the
23 deposition. But I don't have any specific reason to disagree
24 with the problem.

25 THE COURT: Okay.

1 MS. BARBER: If your Honor would like me to
2 continue to explain --

3 THE COURT: You can respond. I will tell you, it
4 would seem to me to be unfair to not permit a re-deposition
5 under circumstances where the transcript was lost due to no
6 fault of the party taking the deposition. Especially given
7 that Mr. Fitzgerald is a party. This is not a third party
8 who otherwise has no interest in the case. This is somebody
9 who is named as a defendant.

10 You know, in my years practicing I never had a
11 transcript lost. I never heard of this happening before. So
12 this strikes me as a once-in-a-blue-moon circumstance, and
13 without any allegation of bad faith here I'm having a hard
14 time seeing why I should deny the right to re-depose
15 Mr. Fitzgerald.

16 MS. BARBER: The thing is, your Honor, that this
17 would be the third time that plaintiff would be deposing
18 Mr. Fitzgerald. So he did sit for a deposition twice.
19 Mr. Taylor filed a state court lawsuit and a federal court
20 lawsuit alleging substantially the same things, in particular
21 with regard to Mr. Fitzgerald.

22 So Mr. Fitzgerald is one of the OPR officers who
23 arrested Mr. Taylor for an incident where he was alleged to
24 have shot a BB gun at his neighbor. Mr. Taylor filed a
25 malicious prosecution case for that charge in state court and

1 deposed Mr. Fitzgerald in that case where he was also a
2 defendant.

3 Mr. Taylor also filed a malicious prosecution case
4 -- malicious prosecution case in this case as well as the
5 various employment claims. In both cases he alleged that the
6 motivations were racial and politically motivated.

7 So the issues are exactly the same. So if this was
8 a circumstance where, you know, just this unfortunate event
9 happened, then the situation may be different. But in this
10 case plaintiff has already deposed Mr. Fitzgerald and asked
11 him all of the questions he wanted to on this topic.

12 THE COURT: Okay. But did you object to the
13 federal deposition notice on the merits, raising that
14 argument?

15 MS. BARBER: No. He voluntarily sat for the
16 deposition.

17 THE COURT: So I kind of feel like to some extent
18 the ship has sailed a little bit. I don't want to say that
19 you've waived the right to object to the deposition notice,
20 because circumstances are a little different, but it seems
21 like the argument you're making on how he had already been
22 deposed in the state case would have been just as properly
23 directed towards the original federal deposition notice.

24 MS. BARBER: Well, I didn't represent
25 Mr. Fitzgerald at that time so I can't speak specifically

1 with respect to that. But my point in raising that is a
2 fairness aspect. So your Honor had said that it seems to be
3 unfair for plaintiff to have lost this deposition transcript.
4 And what I'm trying to get across is plaintiff didn't lose
5 everything. He already has one. He has one with questions
6 under oath by the counsel that he chose on the topics that he
7 wanted and on the same claims and same issues.

8 THE COURT: Aren't the parties slightly different,
9 aren't there additional defendants in the one case that --
10 well, aren't there additional defendants here in the federal
11 case --

12 MS. BENSINGER: Yes.

13 THE COURT: -- that were not in the state case?

14 MS. BENSINGER: Yes. Related to the employment
15 issue. But the malicious prosecution --

16 THE COURT: Those are your clients?

17 MS. BENSINGER: Those are my clients.

18 THE COURT: So what's to stop your clients from
19 complaining about this deposition transcript from the state
20 court case of Mr. Fitzgerald being used at a trial and
21 potentially, you know, admitted against them given that they
22 weren't there to participate and cross-examine the witness?

23 Because usually, you know, a deposition transcript
24 can be used at a trial against a party if that party was
25 present and had an opportunity to question the witness. If

1 your clients weren't there it seems like you could argue that
2 the transcript couldn't be used at least as to your clients,
3 or perhaps even heard by the jury in considering your
4 clients' claims.

5 MS. BENSINGER: Certainly, your Honor. And we
6 could consider that argument. But here we have no objection.

7 THE COURT: Okay. In any case, the rules are
8 different under state procedure and federal procedure. The
9 time limit in particular is a big difference. Is it still
10 three hours under Illinois procedure?

11 MR. BUSTAMANTE: Correct.

12 MS. BARBER: And I would just like your Honor to
13 know that the federal court deposition in this case was very
14 short. I believe it was less than an hour and a half.

15 THE COURT: Okay.

16 MS. BARBER: So it seems like a do-over in this
17 circumstance. He has new counsel, he's going after this guy
18 for a third time --

19 THE COURT: Well, it's the second time. I'm really
20 not inclined to hold it against the plaintiff that this
21 transcript from the original federal court deposition is
22 lost. I think that to the extent there are arguments that
23 could be raised, notwithstanding the fact that he was deposed
24 this intermediate time that we no longer have a record of, I
25 can consider those, but I'm not going to hold it against them

1 that they properly noticed the deposition, the deposition
2 took place without objection on these grounds, and through no
3 fault of their own the transcript is lost. That strikes me
4 as unfair.

5 I'm going to allow them to re-depose him, because I
6 think that will get around any of the problems about the
7 other deposition being used, but I am going to limit the
8 time, particularly hearing that the federal deposition was
9 originally so short. This is not going to be an opportunity
10 for plaintiff's counsel to come back and now take a
11 seven-hour deposition.

12 Do you concur with the length? Do you agree that
13 it was originally only an hour and a half?

14 MR. BUSTAMANTE: I don't know, your Honor, because
15 the transcript doesn't show when there were pauses --

16 THE COURT: Were you there?

17 MR. BUSTAMANTE: No, I was not.

18 MR. LINDEN: We don't have a transcript.

19 I think you're thinking of the other defendant.

20 MR. BUSTAMANTE: Oh.

21 MR. LINDEN: We have no idea.

22 THE COURT: For the federal case?

23 MR. BUSTAMANTE: That's correct.

24 (Indecipherable crosstalk.)

25 MR. LINDEN: We don't know how long because the

1 transcript is not there, so --

2 THE COURT: Was it Ms. Coleman who took it?

3 MR. LINDEN: Exactly, Judge.

4 THE COURT: And you don't know how long she was
5 there.

6 MR. LINDEN: She's a judge now. But the other dep
7 she took of Mr. Ernst was quite long, so I don't...

8 MS. BARBER: It was not quite long. And Fitzgerald
9 was the day after, and it was a lot shorter. And then
10 Ms. Coleman moved to withdraw the day after that.

11 THE COURT: Does the court reporting service have a
12 record of how long the deposition was?

13 MR. LINDEN: We could agree to three hours, Judge,
14 if that would be acceptable.

15 THE COURT: Because some court reporter put in a
16 time sheet for how long he or she spent at that deposition.

17 MR. LINDEN: We're agreeable if it would be okay
18 with the Court to limit it to three hours, if that would
19 suffice.

20 THE COURT: I anticipate there may be an objection.
21 So a limit to three hours?

22 MS. BARBER: Well, I think two would be more
23 appropriate.

24 But additionally what I'd like to ask is that there
25 are pending motions to dismiss in this case, so Ernst has

1 moved to dismiss all the claims against him, and what I would
2 ask your Honor if he does have to sit again --

3 THE COURT: But it's Fitzgerald. You mean
4 Fitzgerald? You said Ernst.

5 MS. BARBER: Yes. I'm sorry. That's what I meant.
6 If he does have to sit again, if the deposition could be
7 stayed until the motions to dismiss are ruled upon. So that
8 would at least alleviate some of the burden of having to sit
9 again if he's no longer a defendant.

10 THE COURT: If he is dismissed as a defendant will
11 he still be a witness?

12 MR. LINDEN: Most likely he would. He's part of
13 the OPR investigation that went. So I don't think -- he
14 would not be a witness.

15 In any event, we did respond, Judge. It's almost
16 -- it's simply rehash of the prior motion to dismiss. Your
17 Honor ruled on the great majority of their arguments, we
18 briefed it, but you issued a number of rulings in this case
19 when Ms. Coleman represented the plaintiff.

20 MR. BUSTAMANTE: He would be a witness.

21 MR. LINDEN: He would be a witness.

22 THE COURT: Okay. I'm not going to stay the
23 deposition. It seems very likely to me based on what I know
24 of the case that he would be a witness anyway. I am going to
25 limit it to three hours.

1 I'm also going to make it clear on the record that
2 by choosing to re-depose Mr. Fitzgerald the parties should
3 proceed and the Court will proceed as if that other
4 deposition did not take place. And I'm specifying that for
5 this reason: To the extent he said something at that
6 deposition or you think he said something at that deposition
7 that is different than what he says at the new deposition, I
8 don't want Ms. Coleman -- Judge Coleman now -- to be
9 subpoenaed in or anybody else to be subpoenaed in to try to
10 impeach him that he said something different under oath at
11 that other deposition.

12 So to the extent he is going to be re-deposed, this
13 deposition completely supersedes the prior testimony. That
14 testimony will not be used in any purpose for evidentiary
15 matter. The only exception for that would be if it comes up
16 in an issue of credibility where Mr. Fitzgerald would need to
17 use that testimony to rebut a claim of recent fabrication.
18 In other words, for somebody to suggest he came up with a new
19 story around the time of this current deposition I would
20 allow him to say I said the same thing previously. But this
21 is not an opportunity for the plaintiff to try to catch
22 Mr. Fitzgerald in any sort of inconsistent statement.

23 And I'm going to allow it and I'm not going to stay
24 it because I do think he's likely to be a witness here. I
25 think three hours. If he sat for a three-hour deposition in

1 the state case and an hour and a half in the federal case,
2 frankly under the seven-hour rule in federal court he's still
3 not very much over what the time limit would be.

4 I appreciate that he's frustrated. It's never fun
5 to be sued. Unfortunately one of the things that happens
6 when you get sued is you get deposed. And under the rules
7 they could have asked him questions for seven hours. And so
8 I think this is a reasonable compromise for Mr. Fitzgerald.

9 For Sheriff Dart, why does Sheriff Dart need to be
10 deposed in this case?

11 MR. BUSTAMANTE: I'm sorry, why --

12 THE COURT: Sheriff Dart. Why does he need to be
13 deposed?

14 MR. BUSTAMANTE: Your Honor, there are several
15 reasons. Let me start first that -- Mr. Taylor states -- has
16 testified, I believe, that Sheriff Dart was present at
17 political functions where Mr. Taylor was supporting or
18 backing Mr. Dart's appointment for sheriff. Mr. Taylor
19 believes that part of the reason for why he was treated the
20 way he was treated is because of retaliation because of his
21 political support of Dart's opponent.

22 Now, Mr. Taylor has informed me that it has been
23 more than one occasion where he and Dart were at the same
24 function together. Okay? I want to question Mr. Dart about
25 those things. But not only that, your Honor --

1 THE COURT: Does Sheriff Dart know Mr. Taylor?

2 MR. BUSTAMANTE: Well, Mr. Taylor believes Mr. Dart
3 knows him. Whether Mr. Dart will acknowledge that or not I
4 don't know.

5 THE COURT: Does he have a basis -- have they
6 spoken to each other, has he been introduced to Sheriff Dart?
7 I have been at events with lots of people; I wouldn't claim
8 that, you know, because I once saw Prince in concert that
9 Prince knows me -- or knew me when he was alive -- to use an
10 absurd example.

11 MR. BUSTAMANTE: Your Honor, when you're in a small
12 group of people -- and this was happening at a Fire
13 Department meeting with fire personnel, and Mr. Taylor and
14 Mr. Dart, where Mr. Dart is speaking to a very small group of
15 people, and looking directly at Mr. Taylor, and Mr. Dart in
16 his speech, Mr. Taylor reports, uses profanities, uses this,
17 uses that.

18 So he's well-acquainted with -- this is not an
19 unknown person. This is like two friends talking together.
20 This is what Mr. Taylor reported to me.

21 THE COURT: Is there anything in the record to
22 indicate that Sheriff Dart was personally involved in the
23 decisions involving Mr. Taylor's employment?

24 MR. BUSTAMANTE: Well, therein comes the rub, your
25 Honor. Mr. Dart has attempted, and probably successfully so

1 far, attempted to distance himself from anything having to do
2 with Mr. Taylor. And he claims he has no responsibility
3 whatsoever, it appears to me, for how his office is run. So
4 that's another area I would like to question him, your Honor.

5 For example, when Mr. Taylor was detained and
6 people came to his house and searched it with a warrant, a
7 number of racial expletives were being used by his sheriffs.
8 This was reported by -- one of the sheriffs was reported to
9 the chain of command.

10 Now, if Mr. Dart is the Sheriff of Cook County, why
11 didn't he take action to at least investigate those reports
12 of racial epithets being thrown at his own sheriff,
13 Mr. Taylor. And --

14 THE COURT: Do you have evidence that he was aware?

15 MR. LINDEN: Can I add one thing, Judge? We do in
16 some respects, about three years ago to this day -- I don't
17 know if your Honor read, it's been all over the paper --
18 Mr. Dart gave an interview on WGN radio what happened at
19 Mr. Dart's disciplinary hearing before the merit board --

20 MR. BUSTAMANTE: Mr. Taylor's.

21 MR. LINDEN: Mr. Taylor's disciplinary hearing. It
22 was found by Judge Cohen in the Circuit Court of Cook County
23 about three years ago that the board is improperly
24 constituted.

25 It has gotten a lot of press. What happened, one

1 of our claims in this case is a retaliation claim that after
2 Officer Taylor was found guilty by the merit board, and then
3 that decision was overturned, that a backpay order is in
4 place. Mr. Taylor alleges that Sheriff Dart, through him and
5 his undersheriff, Undersheriff Whittler, retaliated against
6 him, tried to reinstate these old complaints just to
7 retaliate.

8 THE COURT: Retaliated against him for what?

9 MR. LINDEN: Retaliated essentially for asserting
10 his court rights in the Circuit Court of Cook County and
11 getting his termination overturned and ordered backpay.

12 THE COURT: Is the undersheriff on a witness list,
13 and has he or she been deposed?

14 MR. BUSTAMANTE: She is. They're still determining
15 whether or not to object to it, according to the footnote.
16 We've requested her deposition. But opposing counsel has not
17 yet determined whether they will object or not.

18 MR. LINDEN: Maybe as a compromise would it make
19 sense if we were able to depose the undersheriff and maybe
20 reserve your Honor's ruling with respect to Sheriff Dart?

21 MS. BENSINGER: Can I respond to all of this if you
22 don't --

23 THE COURT: I'll ask one easy question, and then
24 you may respond.

25 MS. BENSINGER: Okay.

1 THE COURT: Easy question: Has Mr. Taylor been
2 deposed yet?

3 MS. BARBER: Yes.

4 MS. BENSINGER: There were initially three cases --
5 maybe Ms. Barber can speak to this better -- and Mr. Taylor
6 requested that he be deposed early on, even though we hadn't
7 gone through discovery.

8 Is that right? Or maybe you can talk about what
9 happened.

10 MS. BARBER: I can't add any -- I'm not sure. I
11 can't add anything. We came into the case around the same
12 time. But he was deposed by previous counsel in the federal
13 case. But there were a number of federal court cases. I
14 believe the 2015 case was consolidated with this one after he
15 had been deposed.

16 MS. BENSINGER: So there may be a request to
17 re-depose him, but at this point he has been deposed.

18 THE COURT: Was he asked about Sheriff Dart's
19 personal involvement or lack thereof in his whole process in
20 Mr. Taylor's disciplinary process, everything that happened
21 in front of the merit review board, et cetera?

22 MS. BARBER: Unfortunately I can't remember the
23 date of his deposition, so I'm not sure where we even were in
24 the process with the merit board when he was deposed. I'm
25 sorry. I don't have that information.

1 THE COURT: Okay.

2 MS. BENSINGER: I haven't seen any evidence that
3 Mr. Taylor has any personal knowledge of the Sheriff's
4 involvement in any personnel or any employment action with
5 regard to him. I can tell you, your Honor, that the Sheriff
6 has responded -- himself, has responded to plaintiff's
7 interrogatories and has stated under oath that he has had no
8 involvement in the personnel decisions with respect to
9 Mr. Taylor or any employment action with respect to
10 Mr. Taylor.

11 And as you know, there is significant case law
12 recognizing the special circumstances for deposing a public
13 official, particularly one as busy as Sheriff Dart.

14 So the idea that the sheriff has no responsibility
15 for running his office, I'm not even going to sound to that,
16 because if the sheriff were required to sit for a deposition
17 on every individual who says, oh, well, he needs to sit
18 because I filed a lawsuit and I need to find out how involved
19 he was in the office, that's not the standard.

20 THE COURT: Okay. So recognizing the incredible
21 number of lawsuits that are filed where people want to sue
22 Sheriff Dart, I think before I would permit the deposition to
23 go forward I would need to have some evidentiary basis to
24 believe that he has personal knowledge of facts that are
25 necessary to decide this case. So far I haven't heard that a

1 witness said, yes, I discussed with this Sheriff Dart and he
2 knows Mr. Taylor, or whatever it might be.

3 It seems like the only basis the plaintiffs are
4 offering or the plaintiff is offering for believing Sheriff
5 Dart has any personal knowledge is just Mr. Taylor's
6 speculation. What else does he have, if anything?

7 MR. LINDEN: He drove -- Sheriff Dart's opponent in
8 the election was a person by the name of Sylvester Baker. I
9 think it was back in 2010, I believe. I think it's 2010 I
10 believe at the end. Mr. Taylor was a driver for Sylvester
11 Baker. Mr. Taylor, I understand it, appeared in radio
12 commercials for him.

13 So we do believe that there is more than
14 speculation that Sheriff Dart was aware of Officer Taylor.
15 I've heard the Cook County Sheriff's Department is very, very
16 political. They've got people looking to see who opposes
17 Sheriff Dart.

18 MS. BENSINGER: Can we not have on the public
19 record speculation and rumors? I'm going to object to that.
20 Both counsel.

21 THE COURT: Okay. I'm not going to strike his
22 comments. I mean, this is clear this is what the attorney is
23 representing as being his belief. I don't think it's all
24 that controversial for a citizen of Cook County to suggest
25 that the sheriff's office is political. He's not a witness.

1 He's not under oath. Once we start saying attorneys can't --
2 have to be very careful about those sorts of statements we
3 probably would get everybody in trouble.

4 I'm still not hearing actual evidence of personal
5 knowledge. So the jump that you want me to make is that
6 because Mr. Taylor was a driver for the political opponent
7 you think Sheriff Dart knew that he was a driver? Do you
8 mean driver, or do you mean something more than that?

9 MR. LINDEN: A driver. He drove Sylvester Baker to
10 the political events, as I understand it, events where
11 Sheriff Dart was present or may have been present. I know
12 Officer Taylor appeared in commercials for Sylvester Baker,
13 and it certainly wouldn't be past imagination that Sheriff
14 Dart would have been aware of it or one of his sheriffs.

15 THE COURT: Well, it might not be past imagination,
16 but that's not evidence again.

17 Do you have a copy of the interrogatory responses
18 from Sheriff Dart?

19 MR. BUSTAMANTE: Yes, we do -- not with us, but we
20 do have one.

21 THE COURT: I don't think they were attached to any
22 of the reports.

23 I take it he was asked whether he had any personal
24 involvement in any this, whether he had personal knowledge,
25 is that fair to say?

1 MS. BENSINGER: Yes.

2 MR. BUSTAMANTE: Your Honor, how about this? I
3 understand --

4 THE COURT: No, I think --

5 MS. BENSINGER: I can email you those right now if
6 you would like.

7 THE COURT: Let me sort of explain where I'm
8 heading with this.

9 MR. BUSTAMANTE: Okay.

10 THE COURT: You can do depositions on questions.
11 Depositions don't have to be pursuant to an oral deposition.
12 It's not clear to me that a deposition on written questions
13 would advance the ball beyond what you've already gotten in
14 the interrogatory responses.

15 In order to decide this issue regarding Sheriff
16 Dart, I would like to have submitted a copy of his
17 interrogatory responses. Now, are they verified by Sheriff
18 Dart himself?

19 MS. BENSINGER: Yes, your Honor.

20 THE COURT: Then I'd like to see those. Is there
21 any other place that you can point in the record -- in the
22 record, so not just what you think based on the fact that you
23 live in Cook County and you know how things work here --
24 where somebody has said or a document shows that Sheriff Dart
25 had any personal involvement with Mr. Taylor?

1 MR. LINDEN: He certainly has personal knowledge of
2 Officer Taylor at this point. I can point to a WGN radio
3 interview, probably find it on some website where -- it's a
4 big issue for the county, it got an awful lot of press. I
5 was quoted last Monday in an article from the Sun-Times, and
6 so was a spokesman. This ruling could threaten them due to
7 hundreds of disciplinary cases, because what happened the
8 enabling statute for the sheriff's merit board only allows
9 appointments of six years only. Sheriff Dart over the years
10 has ignored that rule and made interim appointments, had
11 merit board members whose term, even interim appointments,
12 had long expired.

13 So there has been class actions filed, there is
14 numerous lawsuits, and it's a big issue. And it's more than
15 speculation at this point. If Sheriff Dart reads the Sun
16 Times and Tribune, he was interviewed on WGN radio, he's
17 certainly aware at this point of Officer Taylor.

18 THE COURT: Because of the lawsuit and because of
19 the other lawsuit.

20 MR. LINDEN: Correct.

21 THE COURT: And the problem --

22 MR. BUSTAMANTE: Here's what I would like to say.

23 THE COURT: -- the problem is this disciplinary
24 proceeding has overlapped with this lawsuit?

25 MR. LINDEN: Yes, your Honor.

1 MR. BUSTAMANTE: We'll submit the interrogatories
2 as you requested, and what I'd like to do is if in the
3 future, as we're going through the depositions, we can bring
4 those facts that your Honor requires that will allow us to
5 take Mr. Dart's deposition, would you, your Honor, consider
6 that, would you leave that option open?

7 THE COURT: Of deposing him?

8 MR. BUSTAMANTE: Of deposing him, yes.

9 THE COURT: I will leave the option open if he has
10 personal knowledge of facts that are relevant to the case.
11 And so far I haven't seen that. So that's what I would need
12 to see. I would need to know that it's based on something
13 more than just he's the sheriff so he's in charge. Or if he
14 doesn't know then that's the problem because he's the sheriff
15 and he's in charge.

16 If he actually personally knows Mr. Taylor, if he
17 personally was involved in decisions involving Mr. Taylor,
18 then it would be appropriate to depose him, and it would
19 distinguish this case from the thousands of other cases in
20 which people have tried to sue Sheriff Dart, properly or
21 improperly. But I don't have enough now to compel the
22 deposition.

23 The second thing I would say is that my first
24 inclination would be to see if it could be a deposition on
25 written questions pursuant to Federal Rule of Civil Procedure

1 31 rather than an oral deposition. And that would depend on
2 how compelling your evidence is of his personal involvement.

3 Now, if this is a situation where he's very removed
4 and you don't need to question somebody about conversations
5 they had or places they visited, written depositions may be
6 all that's warranted. I'm not going to take the idea of
7 deposing Sheriff Dart completely off the table, because there
8 are circumstances where he's going to be an appropriate fact
9 witness. I haven't seen any evidence that this is one of
10 those cases yet. Okay?

11 So I'm not going to compel the deposition. The
12 parties can raise this issue again as the record is developed
13 here.

14 MS. BENSINGER: And your Honor, I think that's a
15 similar issue with Ms. Whittler. What I'm hearing from the
16 plaintiff is that they believe that Ms. Whittler was involved
17 in the decision to reinstitute merit board charges against
18 plaintiff. She's the undersheriff. If they want to issue
19 interrogatories about her involvement, because I don't
20 believe she had any involvement with Percy Taylor whatsoever,
21 other than maybe signing off on command channel review back
22 before the statute of limitations, then I think that would be
23 appropriate.

24 THE COURT: What was her involvement?

25 MR. LINDEN: She was undersheriff. My recollection

1 is that she signed off. Her name appears on numerous
2 documents regarding discipline for Officer Taylor. I believe
3 she was involved. I believe she knows of Officer Taylor. I
4 think we're getting a step removed from...

5 THE COURT: Okay. I'm going to defer any ruling on
6 her specifically. If she is the person that signed off on
7 paperwork that probably does expose her to having
8 participated in some discovery here.

9 I imagine at some point some official in the
10 sheriff's office of some level of seniority must have signed
11 off on paperwork involving Mr. Taylor. I don't know who that
12 person is. But that person should probably expect to be
13 deposed.

14 MS. BENSINGER: Absolutely, your Honor. So we're
15 talking about the No. 1 guy and the No. 2 guy -- or woman,
16 the undersheriff. So there is a command channel review for
17 just, you know, disciplinary proceedings, but that happened
18 well before -- so the undersheriff was one of the -- I think
19 there are three levels of review that signed off on the
20 plaintiff's discipline and investigation from the inspector
21 general, but that occurred before the statute of limitations
22 period. She can't be sued for that.

23 I believe that their complaint against her is about
24 merit board charges, separate and apart from this OPR command
25 channel review issue, merit board charges that she

1 reinstituted. If we can demonstrate that she had no
2 involvement in those merit board charges, then I would like
3 to be able to explore that through an interrogatory where she
4 can just say I promise you, you know, I had no involvement.

5 THE COURT: I'm not sure about the statute of
6 limitations point that you are making. She might not be able
7 to be charged based on certain time periods, but if there are
8 other charges that relate to that time period she may be a
9 witness relevant to those allegations and therefore could be
10 deposed about those allegations even if she can't be charged.

11 Am I misunderstanding your point?

12 MS. BENSINGER: No, but just because her name
13 appears on the command channel review doesn't mean that, you
14 know, she -- I don't believe warrants an extended deposition
15 for the undersheriff. I think that there are special
16 concerns and considerations because she is in the position
17 that she is. But we can cross that bridge when we get to it,
18 but I just wanted to...

19 THE COURT: Has there been an interrogatory issued
20 by the plaintiff that asks the defendants to identify people
21 who were involved in the review process? And perhaps to
22 explain what the review process is step by step.

23 MR. BUSTAMANTE: I don't know for a fact. I do
24 know she signed off on a number of documents. It's our
25 contention even if she gives a blind -- I didn't know better,

1 just signed documents, if you sign a document you're
2 responsible for knowing it and you have a right to question
3 her. She claims she signed off on documents. Even if she's
4 going to say under oath that I didn't know, I had no
5 knowledge of it, why did she sign her name to it? I think we
6 have a right to explore that, even if she's going to say --

7 THE COURT: Was this something that was discussed
8 at your meet and confer?

9 MS. BENSINGER: Yes.

10 MR. LINDEN: We discussed it. Yes.

11 THE COURT: It's not highlighted as an issue in the
12 status report. The status report only mentions Sheriff Dart
13 and Mr. Fitzgerald.

14 MR. LINDEN: That's because they were considering
15 whether or not to withdraw their objection. And because we
16 didn't resolve that or because they didn't decide up to
17 today, that's why it's not in the status report.

18 THE COURT: So the parties should talk about this,
19 because it does seem that some of this information can be
20 better obtained through interrogatories or perhaps written
21 deposition questions. I appreciate the fact that the person
22 who wants to take the deposition usually isn't thrilled with
23 a written deposition because they're concerned that the
24 witness basically has time to consult with their lawyer and
25 draft answers that are going to be more polished than what

1 they might be at a deposition. However, the benefit of them
2 is that when you have somebody who has the sort of job
3 responsibilities that an undersheriff has, sometimes you get
4 better answers because they have an opportunity to review
5 their files, to refresh their recollection as to things that
6 they may have forgotten because they deal with so many people
7 in cases, and you may actually get more fulsome answers than
8 what you would get from somebody who is concerned about
9 speaking off-the-cuff at a deposition and being wrong.

10 So I would strongly encourage the parties to
11 consider whether some of these depositions, particularly of
12 more senior people, could be accomplished in writing under
13 Rule 31 or through interrogatories. To the extent that an
14 official is the person who signed off on an employment
15 action, they are probably going to be subject -- and she's
16 also a defendant for some claims here. She's going to be --
17 I believe. You think she won't be after the motion to
18 dismiss, or have I already ruled on that?

19 MS. BENSINGER: So just -- I think that the only
20 claim that she's in this case for is reinstating some merit
21 board charges against Percy Taylor for which she had no
22 involvement. So that's -- and I would love it if they could
23 issue us an interrogatory, did you have any involvement in
24 that issue, and we say no, and there we go.

25 THE COURT: Has a notice of deposition been issued

1 for her?

2 MR. LINDEN: I believe we did issue a notice, and
3 then we kind of held off, and we did the meet and confer and
4 trying to resolve it, but --

5 MS. BENSINGER: There was no notice.

6 MR. LINDEN: I thought we did. We can give notice
7 tomorrow. But they objected to it --

8 MR. BUSTAMANTE: I mean --

9 THE COURT: Let's speak one at a time.

10 Anybody you want to depose formally notice the
11 deposition so you've made your record, and it will force the
12 other side to actually oppose it in some way. Once you're at
13 issue, consider whether you can reach a compromise such as a
14 written deposition, and if you can't, come back to me and
15 I'll decide it. But for her --

16 MR. LINDEN: Can we have until mid next week to
17 issue all the notices? We'll get them on file by -- or
18 issued by Monday.

19 THE COURT: Right now you do have a discovery
20 deadline. It's clear that's going to need to be adjusted.
21 I'm not suggesting you need to run out and sort of blindly
22 issue deposition notices next week. I would rather you try
23 to work with each other to come up with a schedule when
24 people can actually show up for a deposition. If you issue a
25 bunch of deposition notices next week, I'm guessing most of

1 those dates are not going to work for witnesses, and there is
2 really not a lot of point of insisting on dates that you know
3 people can't make. So I want this to go forward in an
4 orderly manner.

5 Let's talk about the written responses for a
6 minute, because it may be that some of these written response
7 issues need to be dealt with before we get to the depositions
8 or at least some of the depositions.

9 On the interrogatories, for the ones -- well, let
10 me skip to the easier one. Item 3 in the status report that
11 I received that was filed deals with plaintiff's response to
12 defendants' second production request. My understanding is
13 plaintiff is saying that you didn't receive that request.

14 MR. BUSTAMANTE: That's right, your Honor. We
15 couldn't find it, and it was never brought up at our October
16 6th meeting, so we were oblivious. But we got it on the
17 19th. If we can have 14 days to respond to that.

18 MS. BENSINGER: Your Honor, I emailed it to
19 plaintiff's counsel, the three of them, on August 8th, over
20 two months ago, and followed up with an email on October
21 10th, and indicated that if I didn't hear a response that I
22 was going to have to file a motion to compel. I didn't hear
23 anything.

24 THE COURT: Okay. So I'm going to give them the
25 two weeks, because I don't have a motion to compel in front

1 of me, and it wasn't part of the meet and confer. So it's
2 not properly in front of me to be considered as a motion to
3 compel. I'm going to give it until November 7th, so 14 days
4 for the documents to be produced.

5 What sort of documents are included in this
6 supplemental production?

7 MS. BENSINGER: This is documents on mitigation.
8 It's, you know, a wrongful termination lawsuit. So what the
9 plaintiff has done in the interim to find alternative
10 employment.

11 THE COURT: Okay. And am I understanding correctly
12 that the plaintiff has not -- has declined to answer an
13 interrogatory identifying all of his employment positions in
14 the last 15 years?

15 MR. LINDEN: No, that's not accurate. What
16 happened at the meet and confer, my recollection is that
17 issue was never brought up. We'll get answers to them if we
18 can in 14 days. But that was stuck in the status report. I
19 don't believe that was ever discussed, No. 16, and I think we
20 had a meeting for over two hours if I recall. Maybe counsel
21 has a different recollection.

22 MS. BENSINGER: This has been raised with opposing
23 counsel previously. I'm not sure if it was raised at the
24 status. I would have hoped it would be. But I've got maybe
25 three or four emails since I came into the case asking for

1 information to be updated, asking for some real, you know,
2 information on their end. And what we got was, we'll think
3 about updating our interrogatories, we'll think about
4 updating our interrogatories, and then finally at the meet
5 and confer it was we are not updating our interrogatories.

6 So it certainly has been raised in the past. I
7 don't know if we specifically discussed it at the meeting.

8 MR. BUSTAMANTE: Your Honor, the interrogatories
9 were initially answered by Attorney Coleman, and she did just
10 simply list his employment as a sheriff's police officer. We
11 don't disagree that they -- we should update those
12 interrogatories, and we are working to update them to bring
13 them, you know, all the way from his term that he was -- they
14 stopped paying him at the sheriff's police all the way up to
15 today.

16 THE COURT: So what I'm seeing in this exhibit that
17 was not filed is: "Identify all employment positions held by
18 plaintiff in the last 15 years.

19 "Cook County Sheriff's office, police officer, 2000
20 to 2013."

21 Is it the defense position that there were other
22 positions during that time period, or that this response is
23 deficient because it doesn't list anything until after 2013?

24 MR. LINDEN: I think he had a couple part-time
25 minimal jobs doing security.

1 THE COURT: Since 2013?

2 MR. LINDEN: After 2013. I believe it may have
3 been after these interrogatories. But I'll promise to the
4 Court that within 14 days we'll update it and they'll have a
5 complete answer of any employment positions he took.

6 If that would have been brought up in our discovery
7 conference I think we would have addressed it. But we have
8 no dispute they're entitled to it. But as far as I know the
9 answer is accurate at the time. It should be supplemented.

10 THE COURT: Plaintiff's response to interrogatory
11 No. 16 will be updated by the same -- what? November 7th
12 date.

13 The other interrogatories that are cited here, the
14 ones to identify witnesses, people who have knowledge of the
15 facts. Let's see. Looking at the response to interrogatory
16 No. 1, I have to say the response to interrogatory No. 1
17 looks more detailed than I was expecting. So what's the
18 complaint about it?

19 MS. BENSINGER: Okay. If you start on page 5, we
20 have probably like 60 or so witnesses from page 5 to page --
21 I think maybe 13 of individuals that plaintiff had a
22 conversation with about the political and racial motivations
23 of Tom Dart and OPR, which is the sheriffs office, IG.

24 So just all of -- that same kind of phrase is
25 continually listed for all of these individuals, and racial

1 or political motivations of the sheriff and OPR, that that
2 was the subject of their conversation. And that's a problem
3 for us. You can't just list all of these people, and throw
4 that bomb, and then expect us to defend our case without
5 deposing all of those 70-plus people, or however many it is.

6 THE COURT: Didn't the defendants have a similarly
7 long list of people?

8 MS. BENSINGER: No. We would never say -- we
9 described the issues. This is a specific interrogatory that
10 says -- that requests anybody who the plaintiff had
11 conversations with about allegations in the complaint and its
12 requests that the plaintiff identify the content of --

13 THE COURT: How many people do the defendants
14 disclose in their initial disclosures of people potentially
15 having knowledge?

16 MR. LINDEN: 74 or 70 something.

17 MS. BENSINGER: We've agreed to revise our
18 26(a)(1)s. We just received their revised 26(a)(1)s. We
19 don't have an interrogatory response listing 120-plus people
20 that have had a conversation with the plaintiff about the
21 Sheriff of Cook County and the sheriff's, you know, purported
22 racial and political --

23 THE COURT: Here's the problem. You've asked an
24 interrogatory that asks them to identify all persons, and yet
25 you seem to be suggesting they have identified too many

1 people.

2 MS. BENSINGER: Not at all. Not at all. That's, I
3 think, how they are trying to paint it, but that is
4 fundamentally not our position.

5 So the interrogatory requested the content of the
6 communication. To set forth what they said. So what we
7 suggested --

8 THE COURT: Here's the problem with handling it
9 through the interrogatory. I'm not sure what else can be
10 done here --

11 MS. BENSINGER: Yes.

12 THE COURT: -- because you've asked identify all
13 persons with whom he's had any communication. And your
14 concern is that he hasn't gotten into enough detail about
15 each and every person --

16 MS. BENSINGER: I asked to do, you know -- I
17 requested that we come to a compromise, and what I suggested
18 was that the plaintiff identify anybody that -- in those
19 conversations that has identified personal knowledge that
20 that person has about these alleged racial and political
21 motivations of Tom Dart and OPR. Because it's a lot
22 different if the plaintiff is speaking to these people and
23 listing off the plaintiff's concerns about Tom Dart, or if
24 the other person listed is identifying that that person has
25 personal knowledge.

1 THE COURT: So that's a different interrogatory.
2 That's interrogatory No. 2. Interrogatory No. 1 is extremely
3 broad, and so I actually think looking at it more information
4 is provided here than I would have expected in response to
5 that interrogatory. It sounds like your complaint is more
6 with respect to the response to interrogatory No. 2, which
7 asks for the identity of any person who has or claims to have
8 knowledge of the facts concerning the occurrences complained
9 of.

10 MS. BENSINGER: Potentially, but I still want to
11 just exhaust one issue with interrogatory No. 1.
12 Interrogatory No. 1 also requests that the plaintiff set
13 forth the content of the communication, and instead of
14 requiring the plaintiff to set forth what each person said,
15 all we're asking for to compromise is that they say whether
16 these individuals listed provided any personal knowledge
17 during the conversation.

18 THE COURT: How is that different than
19 interrogatory No. 2? Isn't that just a subset of
20 interrogatory No. 2?

21 MS. BENSINGER: We could make it a subset of
22 interrogatory No. 2, but interrogatory No. 2 doesn't
23 specifically reference this response about purported
24 conversations of racial and political motivations of the
25 sheriff and the IG.

1 MR. LINDEN: They could have asked Officer Taylor
2 at the deposition, Judge, all this for detail. Officer
3 Taylor provided the best answers he could, No. 1, and No. 2,
4 they don't ask the context, they just said list it, which he
5 did.

6 It's not the -- the plaintiff shouldn't be faulted
7 for, you know, the defense -- they could have asked all these
8 questions of Officer Taylor. What did this person know.

9 THE COURT: Let me ask plaintiff's counsel a
10 question for whichever of you is in a position to answer it.
11 For the people listed in interrogatory No. 2, how were they
12 identified? Why only those people, out of all of the people
13 listed in interrogatory No. 1?

14 MS. BENSINGER: They also list interrogatory --

15 THE COURT: Okay. I'm sorry. I'm asking
16 plaintiff's counsel a question. You'll have a chance to
17 respond.

18 MR. LINDEN: Judge, Ms. -- now Judge Coleman
19 answered it. So I'm not in the best position. But if you
20 look at the question, it's just so vague. And I would have
21 objected to it, whatever that means: "Identify any person
22 who has knowledge of the facts concerning the occurrences
23 complained of or were or claimed to have been witnesses to
24 the occurrences complained of."

25 I mean, there's a number of -- it's not a car

1 accident case.

2 THE COURT: Regardless of whether she should have
3 answered it, she did. Do you know who those people are and
4 what they know?

5 MR. LINDEN: Yeah, I think these are other people
6 involved in the BB gun. I can't speak for Ms. Coleman,
7 obviously.

8 THE COURT: Except for now you're representing the
9 plaintiff, and so you are responsible now for making sure
10 that the discovery responses are complete, and if they need
11 to be supplemented that they're supplemented.

12 MR. LINDEN: I guess I have a problem trying to
13 answer. It's so big, your Honor. What occurrences; maybe
14 they could specify what occurrences. We could, again, list
15 everybody in one which would be --

16 MS. BENSINGER: He did list everybody in one.

17 MR. LINDEN: Right.

18 MS. BENSINGER: So the answer to No. 2 incorporates
19 everybody that was listed in No. 1.

20 Sorry. That's what I was trying to get at
21 previously.

22 THE COURT: Okay. Today, if the plaintiff were
23 answering interrogatory No. 3: "Identify each person whom
24 you may call as a witness at trial and the subject matter
25 about which each may testify," how many people would you

1 list?

2 MR. LINDEN: 32.

3 MR. BUSTAMANTE: I believe it was 32. How many
4 would we list? About 32.

5 THE COURT: You would list 32 as potential people
6 to be witnesses at trial.

7 MR. LINDEN: Yes.

8 THE COURT: And are you able to describe what they
9 would testify about?

10 MR. BUSTAMANTE: I believe so, your Honor. We
11 prepared, I don't know if you saw in the report, a
12 supplemental 26(a) disclosure that lists the 32 people that
13 we would likely call at trial. And yes, we would be able to
14 describe what subject areas they're going to be questioned
15 about or on which they will testify.

16 THE COURT: I'm going to direct the plaintiff also
17 by November 7th to provide an updated supplemental answer to
18 interrogatory No. 3 so that it's clear -- I understand you
19 say that you've updated your 26(a) disclosure, but let's make
20 sure that things are consistent and it's clear who the people
21 are that you may call as a witness during trial.

22 If something changes and you discover somebody new
23 that you think has information that warrants putting them on
24 the list, you have an obligation to supplement. So you
25 should supplement it if somebody else comes up. But it

1 sounds like on November 7th it will be a list of 32 people
2 and you will be able to describe the subject matter on which
3 they are going to testify. Is that true?

4 MR. BUSTAMANTE: Yes, your Honor.

5 MR. LINDEN: And I think the defense promised to do
6 the same to us. We're awaiting their supplemental -- they
7 identified over 70-some-odd witnesses and said that once we
8 limit our witnesses and supplement that they will, and I
9 think it's only fair that they...

10 MS. BENSINGER: We certainly will be reasonable.
11 Yes.

12 MR. LINDEN: We haven't seen that much.

13 MS. BENSINGER: Your Honor, the concern that I
14 have, I think, you know, this is a great option, and I'm
15 really glad that we're working through this, but the research
16 that I found is -- doesn't eliminate these bombs that they've
17 dropped.

18 THE COURT: I don't know what you mean when you say
19 "bombs that they've dropped." It sounds like just rhetorical
20 flourish to me. What specifically are you referring to?

21 MS. BENSINGER: Okay. So they list all these
22 witnesses in response to interrogatory 1 and say that these
23 witnesses have had communications with the plaintiff about
24 the purported racial and political motivations of Tom Dart
25 and the IG. So I -- if that's still out there and these

1 witnesses conceivably have personal knowledge about purported
2 racial motivations and political motivations of my client, I
3 don't want to be in a situation where plaintiff has got sworn
4 answers -- because these were sworn -- saying, you know,
5 defense had notice.

6 Well, yeah, they weren't on our witness list, but
7 you had notice that, you know, Bernard Taylor, or Abraham
8 Smith, or whoever, like, you know, the rest of these people
9 had knowledge of the racial or political motivations of the
10 sheriff and of OPR.

11 So I just don't want to get into a situation
12 where --

13 THE COURT: If it's not on their list of people
14 they would call as a witness at trial they won't be able to
15 call them at trial. So I'm not sure what sort of notice
16 you're complaining about.

17 MS. BENSINGER: Right. So if it's not on their
18 witness list they won't be able to call them at trial.

19 THE COURT: I'll be presiding over the trial, so
20 I'll know what you have gone through in trying to narrow the
21 list, and I have asked them to identify people they may call
22 at trial. I have told them that they need to supplement that
23 list in a timely manner if something new comes up. If they
24 don't stick to that list and if they don't supplement it in a
25 timely manner, just because somebody's name is somewhere else

1 doesn't mean they're going to get to call that person at
2 trial.

3 MS. BENSINGER: Okay. I appreciate that clarity.
4 It should be obvious to me, but this is a problem for me.
5 Because I totally disagree that anybody on this list has
6 personal knowledge of any purported motivations of my client.
7 And I don't like that there are sworn answers that say that
8 they might.

9 THE COURT: Whether you like it or not, these are
10 the answers. And if Mr. Taylor told them here's why I think
11 it's racially motivated, that's responsive to your
12 interrogatory. So if you're unhappy with these answers it's
13 partially because you didn't draft a very good interrogatory,
14 or whoever drafted it drafted -- I should say a very broad
15 interrogatory. If you want more specific answers, then you
16 should not ask for any person that you had any kind of
17 communication with at all and then complain because you get,
18 quite frankly, again, more information than I think I have
19 ever seen a party give in response to this sort of broad
20 interrogatory.

21 So I think we've talked enough about your concerns
22 about the fact that it says racial motivation. If what you
23 really want to know is who are the people that Mr. Taylor
24 thinks have their own personal knowledge, not something they
25 heard from him but their own personal knowledge of racial

1 motivations, that's a different question, and it's a
2 different question than the one in interrogatory No. 1 quite
3 frankly. It is more similar to interrogatory No. 2, which is
4 why -- if Mr. Taylor wants to supplement interrogatory No. 1
5 for clarity and avoid certain issues he can certainly do so,
6 but looking at the information provided here, again, it seems
7 that he was responsive. It's not necessarily the most
8 helpful answer, but it is responsive.

9 It does not seem that there is something here that
10 is not being provided. There is a little bit of boilerplate
11 here, but frankly, I would not hesitate to let you sit
12 Mr. Taylor down at a deposition and ask him to go through the
13 different people. List the people. You could also do that.
14 I don't know that would be a productive use of anybody's
15 time. But that's usually what happens after you serve an
16 interrogatory and you get a long list of people.

17 I am going to direct plaintiff's counsel to go back
18 to Mr. Taylor and to supplement, to the extent necessary, the
19 response to interrogatory No. 2. It sounds to me like at
20 this point, because in the change of counsel perhaps, you
21 don't actually know what the basis was for the response in
22 interrogatory No. 2. You need to know that. Regardless of
23 whether somebody else represented Mr. Taylor at the time, he
24 verified these responses, is that correct?

25 MS. BENSINGER: Yes.

1 THE COURT: I don't have a signed verification page
2 here.

3 MS. BENSINGER: I believe it was emailed
4 separately. So I've got that that I can provide to you, your
5 Honor.

6 THE COURT: Okay. Are the people who are listed in
7 interrogatory No. 2 the same people who are on the list of 32
8 potential witnesses?

9 MR. BUSTAMANTE: Let me see, your Honor.

10 THE COURT: There are 22 people there.

11 MS. BENSINGER: And it says see interrogatory No. 1
12 at the end of interrogatory No. 2.

13 THE COURT: So let me be clear.

14 MR. BUSTAMANTE: If they're not, your Honor, they
15 probably will be.

16 THE COURT: Okay. I want supplemented responses to
17 interrogatories No. 2 and 3 that do not incorporate by
18 reference interrogatory No. 1. Interrogatory No. 1 is
19 extremely broad, it is a long list of people and covers a
20 long list of conversations and communications. Incorporating
21 it by reference I do not consider to be responsive. I
22 consider interrogatories 2 and 3 to be narrower in scope than
23 interrogatory No. 1.

24 MR. BUSTAMANTE: Understood.

25 THE COURT: Confer with your client and serve

1 supplemental responses by November 7th. Are you going to be
2 able to do that?

3 MR. BUSTAMANTE: Yes, your Honor.

4 THE COURT: And you're also going to be
5 supplementing -- responding to the supplemental document
6 request by November 7th, correct?

7 MR. BUSTAMANTE: Yes.

8 THE COURT: Okay. I'm not at this time going to
9 require a supplement to interrogatory No. 1, because based on
10 what I've heard, what counsel wants is actually the response
11 to interrogatories No. 2 and 3. When you're saying you want
12 to know who has personal knowledge and you want to know who's
13 going to be a witness at trial, you have asked those
14 interrogatories in 2 and 3. So if you get a complete
15 response there it should moot whatever concerns you're
16 raising about interrogatory No. 1.

17 Okay. We talked about interrogatories, we've
18 discussed these two depositions, we've talked about the
19 document request. The only thing that's left in the status
20 report are the list of 15 people that the parties wish to
21 depose. There are 15 on plaintiff's list, there are 10 on
22 the defendants' proposed list. There does not appear to be
23 any overlap here, am I seeing that correctly? Is there any
24 overlap between the list?

25 MS. BARBER: I don't think there is overlap, but

1 it's my understanding that several of the witnesses that we
2 have listed are witnesses plaintiff would like to depose as
3 well.

4 THE COURT: Okay. So we've got a total of 27
5 depositions. The parties should proceed in scheduling these
6 depositions. There may be objections to them, such as
7 Sheriff Dart and Undersheriff Whittler. I want those to be
8 properly teed up, meaning I want there to be a formal notice
9 and an objection served so that it's very clear what the
10 issue is, and I want the parties to actually meet and confer
11 on whether there is an alternative as I discussed earlier.

12 I'm not going to resolve any objections to
13 individual witnesses today. I think the parties should
14 proceed with trying to schedule witnesses and work out as
15 many of these objections as you can, given what you've heard
16 from me so far.

17 You probably need to get the revised discovery
18 responses anyway to confirm who you actually want to depose.
19 Have the defendants served clear disclosures to who you may
20 call as witnesses at trial and on what subject matter, based
21 on what you know now?

22 MS. BENSINGER: Well, we just received their list
23 recently, and based on their revised disclosures we will
24 submit revised disclosures.

25 THE COURT: So given that the plaintiff has the

1 burden of proof here, what I'm going to do is I've already
2 said that Mr. Taylor's -- basically the same disclosure is
3 going to need to be served by November 7th. I want the
4 defendants to make a comparable disclosure of the witnesses
5 that you currently intend or to have on your may-call list --
6 you don't have to call them -- your current may-call list by
7 November 21st.

8 This is a list that you should already have in mind
9 and be working on, and so you'll have a couple of weeks once
10 you see what the plaintiff has offered to see how that
11 changes things. And you can adjust your deposition plans
12 accordingly. But it sounds like what everybody needs here is
13 an idea of what's realistic looking ahead to trial and who
14 you would need. Whose testimony would you put in in support
15 of a summary judgment motion. Who would you likely call at
16 trial.

17 If there are witnesses that are significant to both
18 parties and that you both would like to depose, I do not want
19 you to fight over who's going to actually notice that
20 deposition. Reach a compromise. I have to admit I'm not
21 terribly optimistic based on what I've seen with how the
22 status report ended up getting prepared that you'll be able
23 to work these issues out, but I'm going to assume that that
24 was an aberration and that everybody working on the case is
25 professional, and courteous, and that it just was a bad

1 situation, and that going forward you'll be able to work
2 things out.

3 I am hesitant to set a fact discovery cutoff today.
4 I believe the current date that is still on the calendar is
5 December 29th. So I think what I'd rather do is let you
6 accomplish what you can accomplish for a little while, set
7 another status date, and then reevaluate how much time you
8 actually need for discovery. That will give the defendants
9 the comfort of having a ruling on the now pending motions to
10 dismiss before you have to worry about the end of discovery,
11 but again, your clients from what I can tell are going to be
12 witnesses if any portion of this case goes forward, so I'm
13 not inclined to excuse them from any discovery obligations,
14 frankly.

15 Let's find a status date. I've asked you to
16 exchange your witness list; that will be done by the 21st of
17 November. I would like to see the parties December 12th at
18 10:30, and hopefully you will have accomplished plenty during
19 that time period.

20 For the things I did rule on today is there any
21 confusion? Fitzgerald is going to be permitted to be deposed
22 again limited to three hours. Sheriff Dart I'm not at this
23 point going to permit a deposition. If you want to pursue
24 it, have that conversation. I won't make you actually send a
25 notice, because I think we all know that that's not going to

1 be productive, but if you want to pursue it, try to talk it
2 out with counsel to see if there is an alternative. As I
3 said before, I'm going to grant a motion for a protective
4 order unless and until I see some indication that he actually
5 has some personal knowledge to contribute that's relevant.
6 If you have something, I will look for the interrogatories, I
7 do still want to have those provided, so why don't you file
8 them as further support for the status report. I will take a
9 look at it. But if you have something else that is in the
10 record you'll need to put something together, or a motion to
11 compel or something that explains what's in the record that
12 shows he has personal knowledge such that he should be hauled
13 into an actual deposition.

14 MS. BENSINGER: Along with that, your Honor, it may
15 be appropriate since they're going to be filing the amended
16 joint status report that I provided the Court this morning
17 that as an exhibit they attach Sheriff Dart's
18 interrogatories.

19 THE COURT: Yes. I think that is a good idea. So
20 let's -- if the parties are in agreement that the wrong
21 report was inadvertently filed, I would like a corrected or
22 amended report to be filed. Attach the interrogatory
23 responses as an exhibit. Also attach as an exhibit the
24 plaintiff's interrogatory responses that were handed up to me
25 today so that's clearly part of the record as well.

1 Okay. And I will take a look at the amended report
2 to see if there is anything that jumps out at me as an issue,
3 but I'm expecting that you're going to be able to go, you're
4 going to get these supplemental responses, you're going to
5 exchange your witness lists, you're going to start scheduling
6 depositions, and in advance of the status hearing on the 12th
7 you actually will have accomplished a lot and will know how
8 many depositions you really need in this case. Okay? Thank
9 you.

10 MR. LINDEN: Thank you for your time. We
11 appreciate it.

12 MS. BENSINGER: Thank you.

13 THE COURT: We're adjourned.

14 (End of proceedings.)

15 C E R T I F I C A T E

16
17 I certify that the foregoing is a correct transcript
18 from the record of proceedings in the above-entitled case on
19 October 24, 2017.

20
21
22
23 /s/Colette M. Kuemmeth
24 Court Reporter
25